

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

DARTY REED
:
:
v. : Civil Action No. DKC 20-0439
:
VICKIE MASEY
:

MEMORANDUM OPINION

Presently pending and ready for resolution is the Petition for Writ of Habeas Corpus filed by Darty Reed pursuant to 28 U.S.C. § 2241. For the reasons that follow, the petition will be DENIED.

Mr. Reed was convicted of conspiracy to distribute and possess with intent to distribute cocaine and cocaine base, and possession with intent to distribute cocaine base, after a jury trial. He was initially sentenced to 360 months imprisonment as a career offender. After an unsuccessful appeal and petition pursuant to 28 U.S.C. § 2255, he filed this § 2241 petition in Pennsylvania, seeking to vacate the sentence in light of *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011), and *Miller v. United States*, 735 F.3d 141 (4th Cir. 2013). He contends that his prior Maryland convictions for possession with intent to distribute cocaine and CDS (cocaine/crack) should not have been used as predicates for his career offender status. While the petition was pending, he also filed a motion to reduce his sentence in light of the First

Step Act. The motion was granted and his sentence was reduced to time served, plus two weeks. He was released, and, indeed, has now completed his term of supervised release, which was terminated early.

This petition was transferred to this court from the United States District Court for the Western District of Pennsylvania, because, under *United States v. Wheeler*, 886 F.3d 415, 429 (4th Cir. 2018), the petition might be subject to review on its merits in this circuit. The Government does not challenge Mr. Reed's right to use this mechanism to challenge his sentence, and instead answered on the merits.

Neither *Simmons* nor *Miller* undermines the validity of the prior convictions as predicates for career offender status. As described in *Miller*: "In *Simmons*, this Court held that a defendant's prior conviction for which he could not have received more than a year in prison under North Carolina's mandatory Structured Sentencing Act, N.C. Gen.Stat. § 15A1340.17, was not "punishable" by more than one year in prison and is not a felony offense for purposes of federal law. 649 F.3d at 243." *Miller*, 735 F.3d at 144-45. Mr. Reed's prior convictions were not obtained in North Carolina, and Maryland's sentencing landscape is different. District judges have repeatedly held that prior Maryland

convictions for possession with intent to distribute CDS qualify as a controlled substance offense:

Each of these state convictions properly qualifies as a "controlled substance offense" under the Sentencing Guidelines. U.S.S.G. § 4B1.2(b). Section 4B1.2(b) defines a "controlled substance offense" as "an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense." *Id.* Petitioner's prior controlled substances convictions, under Md. Code Ann. Crim. Law § 5-602, meet this definition.⁵ See Md. Cir. Ct., Docket Nos. 104352C, 110858C; see also *Chambers v. United States*, No. CR RDB-07-0286, 2019 WL 2552239, at *7 (D. Md. June 20, 2019) (holding that "convictions under § 5-602 may serve as predicate offenses for purposes of a career offender designation") (collecting cases)

Bailey v. United States, No. CR GJH-17-0225, 2022 WL 3919670, at *5 (D. Md. Aug. 30, 2022). See also, *United States v. Ward*, 972 F.3d 364, 372-73 (4th Cir. 2020). Mr. Reed was not improperly designated as a career offender. His motion will be DENIED.

/s/

DEBORAH K. CHASANOW
United States District Judge